

# REGULATORY REVIEW CHECKLIST

## To accompany Preliminary Determination Package

Agency *Va. Dept. of Transportation (Commonwealth Transportation Board)*

Regulation title *24 VAC 30-215-10 et seq. Utility Accommodation Policy*

Purpose of the regulation *To establish the terms and conditions for accommodating and controlling access of utility facilities to the highway right of way, including those relocated or modified with transportation projects.*

### Summary of items attached:

- ☒ Item 1: An explanation of the specific reason for the proposed regulation.
- ☒ Item 2: A statement identifying the source of the agency legal authority to promulgate the contemplated regulations and a statement as to whether the contemplated regulation is mandated by state law or federal law or regulation, and, if mandated in whole or in part, a succinct statement of the source (including legal citation) and scope of the mandate. **(Be sure to attach a copy of all cited legal provisions).**
- ☒ Item 3: A statement setting forth the reasoning by which the agency has concluded that the contemplated regulation is essential to protect the health, safety, or welfare of citizens or for the efficient and economical performance of an important governmental function.
- ☒ Item 4: A statement describing the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the essential purpose, the alternatives considered or to be considered (to the extent known), and the reasoning by which the agency has rejected any of the alternatives considered.
- ☒ Item 5: A statement describing the likely impact of the proposed regulation on family formation, stability, and autonomy. If adverse impacts are anticipated, include a discussion of steps to be taken which will minimize the impacts.

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David R. Gehr  
Signature of Agency head

2/21/97  
Date forwarded to  
DPB & Secretary

**REGULATORY REVIEW CHECKLIST**  
**ITEMS TO ACCOMPANY**  
**PRELIMINARY DETERMINATION PACKAGE**

**Item 1:** The *Utility Accommodation Policy* is necessary to clarify and amend existing terms and conditions under which utility facilities may be granted access to highway right of way as required by current federal and state regulations. *The General Rules and Regulations of the Commonwealth Transportation Board* (24 VAC 30-20-10 et seq.) specify that VDOT's *Land Use Permit Manual* (24 VAC 30-150-10 et seq.) and the *Minimum Standards of Entrances to State Highways* (24 VAC 30-70-10 et seq.) shall address specific policies and procedures commercial, private, and governmental applicants must follow when seeking to perform work within the limits of VDOT-owned or -controlled right of way.

Terms and conditions concerning utility access are referenced throughout VDOT's *Land Use Permit Manual*. However, the current policy does not directly address shared resource facilities and wireless technologies, which are addressed in recent federal statutes and regulations. VDOT is preparing a Pre-Notice of Intent of Regulatory Action documentation package (Pre-NOIRA) to amend *the General Rules and Regulations of the Commonwealth Transportation Board*. If permission is granted to promulgate the proposed *Utility Accommodation Policy* as well, all APA regulations concerning utility-related activities occurring within VDOT-owned or -controlled right of way will be updated or promulgated together.

A Notice of Intended Regulatory Action was published to amend the *Land Use Permit Manual* in accordance with the Administrative Process Act in February of 1994 (copy enclosed). To date, VDOT has not submitted an official draft of the proposed *Land Use Permit Manual* to the Department of Planning & Budget so that an economic impact analysis can be performed, as required by statute. Upon completion of an official draft, a copy will be forwarded to the appropriate officials for review. The regulation *Minimum Standards of Entrances to State Highways* has completed the public hearing stage of the APA promulgation process, and a final version is being prepared for publication.

Because of the need to respond to the rapidly changing utility industry, VDOT managers believe it is desirable for the *Utility Accommodation Policy* to be promulgated separately from the rest of the *Land Use Permit Manual*. If necessary, further changes can be made to the *Utility Accommodation Policy* without amending the *Land Use Permit Manual*.

For example, progress in the utility industry, especially the development of wireless technology, has created a real need for a change in the policy. In addition, the creation and deployment of Intelligent Transportation System (ITS) devices also directly affect the scope and requirements of the policy. Furthermore, enactment of the Telecommunications Act of 1996 makes it important that the policy reflect current conditions affecting utilities.

**Item 2:** The current utility accommodation policy used by VDOT exists as a part of the *Land Use Permit Manual*. The CTB has the authority granted by § 33.1-12 (3) (copy enclosed) to make rules and regulations concerning the use of the Commonwealth's system of state highways, an authority invoked when the *General Rules* were adopted in 1974 and when the *Land Use Permit Manual* was adopted in 1983.

Furthermore, 23 CFR 645.211 and 645.215 (copy enclosed) address the criteria and application of appropriate policies, including a requirement that each state transportation agency to develop and submit for Federal Highway Administration approval a Utility Accommodation Policy. The Telecommunications Act of 1996 (47 USC 151 et seq.) (copy enclosed) also imposes requirements concerning telecommunications access. Therefore, the proposed regulation can be considered the result of two federal mandates.

The scope of the mandate is broad, since it affects the conditions under which companies (such as those furnishing telephone, cable television, electrical, or water and sewer services) may gain access to and perform work on VDOT-owned or -controlled right of way. Without such access in critical locations, commercial and residential development could be curtailed, hampering the vitality of a region's existing economy, and impairing its ability to grow.

**Item 3:** VDOT believes that this proposed policy is essential for the efficient and economical performance of an important governmental function. VDOT is responsible for maintaining the highway right of way under its jurisdiction in a manner conducive to operational safety, integrity, and function of each system. It is therefore reasonable and necessary for VDOT to regulate the access and use of highway rights of way.

Prudent, non-discriminatory regulation of access and use of highway rights of way also serve an economic interest vital to the Commonwealth. By ensuring that utilities have the flexibility to expand their services as needed, commercial and residential development may be facilitated.

**Item 4:** VDOT is not aware of any alternatives which are less burdensome and less intrusive to achieve the essential purpose of this policy. The highway rights of way are under the jurisdiction of the CTB, and regulating access and use of such property is the only way to ensure competing interests of safety, economic development, and functional performance of the highway are simultaneously satisfied.

**Item 5:** This policy is not likely to have any impact on family formation, stability, and autonomy.